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IDENTIFICATION NUMBER: C00569905

REFERENCE: The 2016 Committee Mid-Year Report (01/01/2015 – 06/30/2015); Received 08/20/2015

This responds to your letter dated August 20, 2015 based upon the Federal Election Commission's (the "Commission?") preliminary review of the Mid-Year Report (01/01/2015 – 06/30/2015) of The 2016 Committee (the "Committee?").

Item 1 – As discussed with our FEC analyst during a telephone conversation on September 2, 2015, all reimbursement amounts to individuals that exceed \$500 have been itemized. All other reimbursements do not qualify for itemization under 11 CFR §104.9.

Item 2 – The mid-year report has been amended and submitted on September 24, 2015 to provided additional clarification for expenses with a description of "Office Expenses?" and "Fulfillment Items?" to confirm with 11 CFR §104.(b)(3)(i).

Item 3 – Item 3 states, "Schedule E of your report indicates that your committee may have failed to file one or more of the required 48 hour report(s) for independent expenditures (see attached)?. The attachment lists three expenditures reported on Schedule E of the Committee's Mid-Year FEC Form 3X report (01/01/2015 – 06/30/2015).

The reason that the Committee did not file 48-hour reports regarding these expenditures was based on the guidance that the Committee received from the FEC's Information Division, along with the FEC Instructions and FEC regulations.

The FEC's Instructions for FEC Form 3X and Related Schedules states the following regarding 48-hour reports for independent expenditures:

"Any political committee that makes or contracts to make independent expenditures regarding a particular election (e.g., a particular party's Presidential nomination or a particular Senate general election) aggregating \$10,000 or more during the calendar year up to and including the 20th day before an election must ensure that the Commission receives a report of these expenditures no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which the independent expenditure meeting the \$10,000 threshold is publicly distributed or otherwise publicly disseminated.? [Instructions for FEC Form 3X and Related Schedules (Revised 4/2006), p. 19]

Likewise, the FEC's Regulations state the following regarding 48-hour Reports for independent expenditures:

"Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election.? [11 CFR §104.4(b)(2)]

The FEC's Information Division was initially contacted to confirm the FEC Instructions and FEC Regulations that 48-hour Reports regarding independent expenditures were not required to be filed in non-election years. The Information Specialist said that 48-hour Reports were not required to be filed in non-election years.

After the RFAI letter was received, on September 4, 2015, the FEC's Information Division was contacted again, and was asked whether 48-hour Reports regarding independent expenditures were required to be filed in non-election years. The Information Specialist (Miles), who was a different person from the one spoken with earlier, said that 48-hour Reports were not required to be filed in non-election years. The Information Specialist was then told that the Reports Analysis Division sent a request for additional information to the Committee which indicated that, based on the Schedule E of the Committee's Mid-Year Report (1/1/15 through 6/30/15), 48-hour Reports should have been filed with respect to three independent expenditures made in April, May, and June 2015. The Information Specialist said he would check into this matter and call back. Three hours later, the Information Specialist called back and said that he had conferred with several "senior staff members,?" and said that, based on 2 U.S.C.

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§434(g)(2)(A), the Committee is required to file 48-hour Reports in non-election years, as well as in election years. Section 434(g)(2)(A) states:

"A person (including a political committee) that makes or contracts to make independent expenditures aggregating \$10,000 or more at any time up to and including the 20th day before the date of the election shall file a report describing the expenditures within 48 hours." 2 U.S.C. §434(g)(2)(A).

The Information Specialist said that he regretted the earlier guidance, and did not know why there was a discrepancy between the Code, and the FEC Regulations and the FEC Instructions regarding this matter. He said we could quote him in our response to the RFAI.

Accordingly, the committee has filed 48-hour Reports regarding the three referenced independent expenditures on September 24, 2015.

Item 4 – The independent expenditures schedule (Schedule E) has been amended and submitted on September 24, 2015 to reflect all the necessary information outlined in the RFAI.

Additional response is required by the second paragraph of Item 4. As evidenced by our Committee's proper reporting of independent expenditures, such as radio and TV ads and RV ads, on Schedule E, we do understand that requirement as applied to those public communications. However, the illustrations provided in the second paragraph of Item 4 of this RFAI suggests classifying some or all printing, postage, mailhouse, and fulfillment expenses as IEs on Schedule E. This raises the issue of whether some, or all, mailings constitute an IE. If all mailings do not constitute an IE, which mailings do, and which do not? We can find no clear guidance as to which types of mail may be reportable as IEs. Does the Committee make an IE every time it mails out a fundraising letter or a book on Dr. Carson or bumper stickers? The 2016 Committee has sent a great deal of mail soliciting funds. Are fundraising solicitations IEs? And, whatever expenses are required to be reported as IEs on Schedule E, would seemingly also need to be reported also in 48-hour reports. This would create a reporting nightmare, made worse by the absence of clear FEC guidance. In inquiring about 48-hour IE reports, we were advised that although what were called "indirect expenditure" items like rent and payroll could be reported as IEs if the Committee wanted to report them, they need not be so reported. Yet we can find no written FEC guidance which makes the direct-indirect expenditure distinction posited by FEC information division staff.

If it is deemed that the Committee makes an IE every time it mails out a fundraising letter or a book on Dr. Carson or bumper stickers, then substantial IE expenditures are being made virtually every day, and reporting every expense (even omitting rent and payroll, etc.) would require hiring multiple people to monitor every dollar spent each day, and preparing and filing 48-hour reports either every day, or at least every other day. Moreover, accurate reporting of direct mail costs is impossible at the time direct mail is sent as final invoices are not yet available. The only information that is available are estimates of mailing costs, which are never precise, and will almost certainly result in errors in reporting. If these 48-hour reports would need to be amended to give correct numbers once final invoices are received, every report would need to be filed at least twice. Is this truly the position of the FEC as to what is required?

Moreover, if the Committee is required to report all mail as IEs, next year there will be great confusion, as the Committee does not track its mailings by state, to say nothing about allocating costs by the number of pieces of mail sent into each state, but 24-hour IE reports are required prior to primaries held in various states. There would be no way to report expenditures for mail going into a particular primary state, since most mailings

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are national.

The 2016 Committee is an IE-only committee, and thus one could say that every penny it spends is an independent expenditure in support of Ben Carson for President. Some of the problem seems to be that the requirement of 48-hour reports arose before the existence of IE-only Committees, like The 2016 Committee. We would seek additional guidance as to how the Committee can reasonably comply with current law.

If you have any additional comments or require additional information, please let us know.

Robert H. Frank, Treasurer